

Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77 - 939

Larry A. Blizzard, Etc.,

Petitioner,

v.

Frank L. Mahan, Etc., et al.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

The Petitioner, on behalf of himself
and others similarly situated, respectfully
petitions this Court for a writ of certio-
rari to review the judgment and opinion
entered on August 11, 1977, in this proceed-
ing by the United States Court of Appeals
for the Fourth Circuit.

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OPINIONS BELOW

The opinion of the Fourth Circuit, rendered on August 11, 1977, is not reported. It is reprinted as Appendix A to this Petition. (pp. 14-15, infra). Petitioner's petition for rehearing en banc was denied by the Court of Appeals on October 4, 1977. The memorandum opinion of the United States District Court for the Eastern District of North Carolina is unpublished. It is reprinted as Appendix B to this Petition. (pp. 16-23, infra).

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

I. Whether a state's affirmative obligation to assure a pro se prisoner's right of meaningful access to the courts is breached:

- A. When the state in effect requires that his legal papers be handwritten by prohibiting his use of a personal typewriter;
- B. When no reasonable alternative source of a typewriter is available; and
- C. When the state posits no countervailing interest of penological administration in support of its

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ban on the use of personal typewriters?

II. Whether a prisoner's First Amendment rights extend to his use of instruments of correspondence as well as his right to correspond with others?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall

any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This is a class action by a state prisoner seeking injunctive relief and damages under 42 U.S.C. §1983. Petitioner seeks relief from an order by

Respondents¹ forbidding access to his personal typewriter which was used to prepare pleadings and other papers to be filed in court, and for the purpose of carrying on personal correspondence.

Petitioner owns a personal typewriter. Prior to December 14, 1975, petitioner had possessed and used this typewriter while confined in the North Carolina Department of Correction Unit at Creswell. Effective that date, however, Respondent Mahan ordered that all typewriters possessed by inmates at the unit would have to be placed in storage or sent home at the owner's expense. Petitioner has been involved in various post conviction proceedings and prison condition litigation on his own behalf and for the assistance of others, and he anticipates that he will continue prosecuting these lawsuits during the remainder of the term of his confinement.

¹ Respondent Frank L. Mahan is superintendent of the Creswell Unit of the North Carolina Division of Prisons, Respondent David L. Jones is secretary of the North Carolina Department of Correction and Respondent Ralph Edwards is Director of the Division of Prisons of the North Carolina Department of Correction.

Petitioner maintains personal correspondence with a number of other people through the mails, and he desires to continue this correspondence. For both his legal work and his letter writing, petitioner found the typewriter to be of great benefit.

Both petitioner and respondents filed motions for summary judgment. The Court denied petitioner's motion, allowed respondents' motion and ordered the action dismissed. The Court of Appeals for the Fourth Circuit affirmed per curiam the action of the District Court.

REASONS FOR GRANTING THE WRIT

This case presents another chapter in the continuing conflict between prisoners' rights and the independent discretion of penal officials. Does the state wrongfully interfere with the preparation of legal papers when it prohibits the use of personal typewriters where there is not meaningful access to other typewriters? Is it consistent with the state's duty to assure access to the courts, when the state prohibits the use of typewriters, but is required to provide paper and pen to indigent prisoners? To what extent has Bounds v. Smith expanded the duty imposed on the state to assure meaningful access to the courts?

These are questions of obvious national importance, fully warranting review and resolution by this Court. The considerations that justify the grant of certiorari in this case may be stated more particularly as follows:

I. THIS PROHIBITION ON THE USE OF PERSONAL TYPEWRITERS BY PRO SE PRISONERS PRESENTS AN IMPORTANT QUESTION IN THE CONFLICT BETWEEN PRISONERS' RIGHTS AND PENAL ADMINISTRATION.

Petitioner submits that access to a typewriter makes the courts more accessible. While handwritten pleadings by prisoners are permitted to be filed, these documents are usually of poor quality and are often illegible. The scrawled, smudged, and indistinct handwritten papers submitted by pro se prisoners simply cannot be digested and understood to the same extent as typed communications.

This presents the question of whether the requirement of meaningful access to the courts is met when legal papers of pro se prisoners suffer this "badge of inferiority" by being handwritten. This prison regulation arbitrarily obstructs pro se prisoners' access to the courts, since the state has posited no countervailing considerations for this restriction. The state's position is simply that the right

to use a typewriter does not have constitutional protection. This court has stood firm on the proposition that the fundamental right of access to the courts should not be obstructed.

In Johnson v. Avery, 393 U.S. 483 (1969), this court struck down prison regulations prohibiting inmates from helping other inmates prepare writs and other legal papers. This Court said, "[I]t is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed." 393 U.S. at 485. [emphasis added].

In Procunier v. Martinez, 416 U.S. 396 (1974), this Court invalidated a ban on the use of law students or paraprofessionals to conduct attorney-client interviews with prisoners. Again this Court enforced the principle that "Regulations and practices that unjustifiably obstruct . . . aspects of the right of access to the courts are invalid." 416 U.S. at 419. [emphasis added].

The recent prison libraries case, Bounds v. Smith, 430 U.S. 817 (1977), furthers the right of access to the courts. In Bounds v. Smith this Court held "that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law

libraries or adequate assistance from persons trained in the law." 430 U.S. at 828. Noting that the Constitution requires "remedial measures to insure that inmate access to the courts is adequate, effective and meaningful", 430 U.S. at 822, the Court determined that the unavailability of legal reference materials to prisoners was an invalid impediment upon their right to litigate.

Petitioner submits that the Court should decide whether the regulation in question is an invalid impediment upon the prisoners' right to litigate. If a prisoner is limited in the preparation of his writs to lead pencil and scratch paper, he is not altogether barred from the courts. Yet by being denied the use of his typewriter, the prisoner is singled out from all other litigants by the marked inferiority of his pleadings and is inevitably deprived of at least some degree of judicial attention, appreciation, and understanding from even the most conscientious court.

II. IN VIEW OF THE RECENT CASE OF BOUNDS V. SMITH, THERE IS UNCERTAINTY AS TO THE SCOPE OF THE STATE'S AFFIRMATIVE OBLIGATION TO ASSURE INDIGENT PRISONERS' RIGHT OF MEANINGFUL

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ACCESS TO THE COURTS.

In Bounds v. Smith, supra, the Court said, "[O]ur decisions have consistently required states to shoulder affirmative obligations to assure all prisoners meaningful access to the courts. It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them." 430 U.S. at 824-825. [emphasis added].

This presents the question of whether this affirmative obligation is breached when the state prohibits the use of personal typewriters but does not provide a reasonable alternative. Petitioner submits that this is an important question for this Court not only for the facts involved, but also to make clear to prison officials the extent of their affirmative obligation to assure pro se prisoners meaningful access to the courts.

A common aspect of each of the prisoners' rights cases, Johnson v. Avery, supra; Procunier v. Martinez, supra, and Bounds v. Smith, supra, is that the facility or resource in question was not a necessary prerequisite to a prisoner's participation in litigation, but that his ability as a litigant was materially advanced thereby. The same is true in this case. Typewritten pleadings are not

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mandated by court rule, but they are clearly a practical necessity for the adequate presentation of a case in court.

As crucial as the right of judicial access is, each aspect of this right must be balanced against any legitimate countervailing interest of penal administration. In Johnson v. Avery, supra, the state was concerned with a possible menace to prison discipline; while in Procunier v. Martinez, supra, threats to prison security and the burden of screening and monitoring visitors were cited; and in Bounds v. Smith, supra, the interest of economy was advanced. In each case these state interests were found of insufficient magnitude to override the prisoners' rights. In the present case, there is no need for such a balancing process, since the state does not rely upon any interest of penal administration which are inconsistent with the prisoner's use of his own typewriter. In fact, prior to December 14, 1975, when this right was arbitrarily withdrawn, petitioner and other prisoners at his unit had used their personal typewriters for a long period of time without any adverse consequences.

Additionally, the state submitted a plan in Bounds v. Smith, supra, which

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was approved by the District Court, which included a proposal "to train inmates as research assistants and typists to aid fellow prisoners." 430 U.S. at 819. In effect the State of North Carolina, on record, is in agreement that typewritten pleadings and papers enhance a prisoner's presentation of a case in court, but would by the regulation in question arbitrarily prohibit the use of personal typewriters.

III. A TYPEWRITER IS AN INSTRUMENT OF PERSONAL CORRESPONDENCE AND IS PROTECTED UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

A typewriter in addition to being a tool for the preparation of legal papers, is an instrument of personal correspondence by prisoners with fellow prisoners and outsiders through the mails. Petitioner submits that a First Amendment protection of a prisoner's right to use his typewriter is present in this case.

"[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the correctional system." Pell v. Procunier, 417 U.S. 817, 822 (1974).

Petitioner respectfully requests that this Court decide to what extent First Amendment rights extend to tools and

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devices used in correspondence.

CONCLUSION

For all of the foregoing reasons, a writ of certiorari should issue to review the judgment of the Fourth Circuit in this proceeding.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 76-2233

Larry A. Blizzard, etc.,

Appellant,

-versus-

Frank L. Mahan, etc.,
David L. Jones, etc.,
Ralph Edwards, etc.,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. John D. Larkins, Jr., District Judge.

Submitted: May 19, 1977.

Decided: August 11, 1977

Before RUSSELL, Circuit Judge, FIELD,
Senior Circuit Judge, and WIDENER,
Circuit Judge.

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Norman B. Smith (Smith, Patterson, Follin, Curtis and James) for Appellant; Jacob L. Safron, Special Deputy Attorney General, for Appellees.

PER CURIAM:

A review of the record and of the district court's opinion discloses that this appeal from the order of the district court denying relief under 42 U.S.C. §1983 is without merit. Accordingly, the order is affirmed for the reasons stated by the district court. Blizzard v. Mahan, C/A No. 76-0117-CRT (E.D.N.C., Sept. 13, 1976).

AFFIRMED.

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APPENDIX B
IN THE UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NORTH CAROLINA
Raleigh Division

No. 76-0117-CRT

LARRY A. BLIZZARD, on)
behalf of himself and all)
other persons similarly)
situated,)

Plaintiff,)

v.)

FRANK L. MAHAN, Superin-)
tendent of Creswell Unit)
of North Carolina)
Division of Prisons;)

DAVID L. JONES, Secretary)
of the North Carolina)
Department of Correction;))
and RALPH EDWARDS,)
Director of the Division)
of Prisons of the North)
Carolina Department of)
Correction,)

Defendants.)

LARKINS, Chief Judge:

The plaintiff, for himself and on behalf
of others similarly situated, comes before

MEMORANDUM OPINION
and
ORDER

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this Court seeking injunctive and monetary relief under Title 42, United States Code Section 1983. The plaintiff is presently confined in the Creswell Unit of the North Carolina Division of Prisons. He complains of a regulation invoked on December 14, 1975, by officials employed by the North Carolina Department of Corrections, defendants named herein, requiring the plaintiff-prisoner to dispose of a typewriter owned by the plaintiff and used by him at the Creswell Unit. The complaint prays for money damages totaling \$12,000.00 from the defendants. Concomitant with the claim for damages, the prisoner requests a permanent injunction to enjoin the defendant officials from enforcing the prison regulations which prevent the plaintiff and members of the alleged class from reasonable possession, access, and use of typewriters owned by the individual prisoners.

It should be noted carefully at the outset of this opinion that the typewriter in question was owned by the plaintiff individually; he apparently kept the typewriter in his living quarters at the Unit. With the assistance of his typewriter, the plaintiff has authored various post-conviction petitions and spawned other litigation. He, also, has enjoyed the use of the typewriter in handling his personal affairs. The December 14, 1975, regulation ordered all typewriters owned by inmates at the Creswell Unit to either be

stored at the Unit or be delivered to the prisoner's residence, outside of the prison, at the owner's expense. The plaintiff elected the latter option. As a result of this order, the plaintiff does not have access to a typewriter, whether owned by the plaintiff, owned by another inmate, or provided by the Department of Corrections.

The plaintiff bottoms his complaint on several premises. First, he contends that the denial of the use and possession of a privately owned typewriter, while incarcerated, impairs his right of access to state and federal courts. He believes that petitions and pleadings drafted by prisoners in handwritten form carry a badge of inferiority. The plaintiff notes in his brief that typed petitions and pleadings from prisoners are not mandated by the Rules of Court of the United States District Court for the Eastern District of North Carolina; however, he argues that typewritten petitions are a "practical necessity". Second, the plaintiff proffers the argument that the denial of access to his typewriter infringes his right to communicate by the mails with respect to his business and personal affairs. The plaintiff argues that these "rights" stem from the guarantees of the First and Fourteenth Amendments to the United States Constitution; that the defendants have violated and usurped these "rights" under color of law; that

42 U.S.C. sec. 1983 provides a device for redress of this alleged infringement. This Court appreciates the ingenuity and novelty of the plaintiff's arguments, but flatly rejects these contentions.

The Fourth Circuit Court of Appeals has not rendered a decision on all fours when compared to the case at bar; that is, a claim involving alleged "typewriter deprivation" under 42 U.S.C. sec. 1983. The Fifth Circuit has been faced with several cases involving prison regulations and removal of prisoner access to typewriters. In each instance, the Fifth Circuit has upheld the prison officials action in blocking or impeding prisoners' access to typewriters. For example, in WILLIAMS V. UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, 433 F.2d 958, 959 (5 Cir. 1970), the court held the following:

Appellant, bringing this action on behalf of himself and all other prisoners similarly situated, claims that the prison prohibition against the inmate use of typewriters in the drafting of their pro se petitions is a denial of free access to the courts. We find no merit in this contention having specifically rejected it in DURHAM V. BLACKWELL, 409 F.2d 838 (5 Cir. 1969).

In a similar Fifth Circuit case, STUBBLEFIELD V. HENDERSON, 475 F.2d 26 (5 Cir. 1973), the opinion states:

It is well established that an inmate has no federally protected right to the use of typewriters to prepare legal writs.

Other Fifth Circuit cases have adopted a similar stance: EISENHARDT V. BRITTON, 478 F.2d 855 (5 Cir. 1973) (upheld misconduct report charging a prisoner with unlawful use of a prison typewriter to type a court petition); SPROUSE V. MOORE, 476 F.2d 989 (5 Cir. 1973); TARLTON V. HENDERSON, 467 F.2d 200 (5 Cir. 1972); DURHAM V. BLACKWELL, 409 F.2d 839 (5 Cir. 1969) (upheld prohibition against the purchase of a typewriter by a prisoner); Annot., 23 A.L.R.Fed. 108 (1975).

The plaintiff relies on a trio of recent United States Supreme Court decisions to sustain his position that the North Carolina prison administrators can not constitutionally deny a prisoner access to his typewriter. The plaintiff cites JOHNSON V. AVERY, 393 U.S. 483, 21 L.ed.2d 718, 89 S.Ct. 747 (1969), YOUNGER V. GILMORE, 404 U.S. 15, 30 L.ed.2d 142, 92 S.Ct. 250 (1971), affirming 319 F.Supp. 105 (N.D. Cal. 1970), and PROCUNIER V. MARTINEZ, 416 U.S. 396, 40 L.ed.2d 224, 94 S.Ct. 1800 (1974) as authority for his position. These cases lucidly evidence a trend in the Supreme

Court to protect the inmates' right to petition for post-conviction redress; however, these decisions should not be extended to embrace the plaintiff's position. In JOHNSON V. AVERY, *supra*., the Court reversed a disciplinary penalty placed on a prisoner for violating a prison administrative regulation which prohibited inmates from assisting their confined peers in the preparation of writs and other legal documents. In PROCUNIER V. MARTINEZ, *supra*., the Court invalidated a regulation which prevented law students and paralegals from conducting attorney-client interviews with prisoners. Finally, an effort by the State of California to reduce the size of its prison law libraries was held constitutionally impermissible in YOUNGER V. GILMORE, *supra*. In each case where the prisoners' right of access was maintained, the Supreme Court did not employ language broad enough to embrace the situation at hand. Also, the JOHNSON, PROCUNIER, and GILMORE decisions do not demonstrate a social policy consideration so potent as to support and further the plaintiff's contentions. The ease in which this trio of decisions can be distinguished factually from this complaint founded solely on the prisoner's loss of the use of his typewriter underscores the the weakness in the plaintiff's claim. In no case cited by the plaintiff has a federal court ever held that the

ORDERED that the plaintiff's motion for summary judgment pursuant to Rule 56, Fed.R.Civ. Pro. is hereby DENIED,

FURTHER ORDERED that the defendant's motion for summary judgment pursuant to Rule 56, Fed.R.Civ.Pro., be, and the same is hereby ALLOWED, and that this case be, and the same is hereby DISMISSED, and

FURTHER ORDERED that the Clerk shall serve copies of this ORDER upon all counsel of record.

Let this ORDER be entered forthwith.

/s/ John D. Larkins, Jr.

JOHN D. LARKINS, JR.

CHIEF JUDGE

At Trenton, North Carolina

September 10, 1976

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deprivation of a prisoner's access to his typewriter by a prison regulation alone, without attending facts, could serve as the basis for a Section 1983 claim. Since the United States Constitution, statutes, court rules, and case law do not secure a prisoner's right to access to the courts via the ownership and use of a typewriter, this civil action for redress under 42 U.S.C. sec. 1983 is not viable.

Before disposing of this case, the procedural posture of this action should be noted. The plaintiff has submitted a summary judgment motion in accordance with Rule 56, Fed.R.Civ.Pro.; the defendant has proffered a motion to dismiss based on Fed.R.Civ.Pro. 12(b)(6). Since all parties have filed written memorandums with this Court and have a reasonable opportunity to present all materials pertinent to a motion by Rule 56, the Court shall treat the defendant's motion to dismiss as a motion for summary judgment for the disposition of this action. BRADFORD V. SCHOOL DISTRICT NO. 20, 364 F.2d 185 (4 Cir. 1966).

The plaintiff has failed to establish a constitutional right which has been impaired by the defendants; a prisoner's loss of the use of this typewriter has not yet attained constitutional magnitude.

NOW, THEREFORE, in accordance with the foregoing, it is